

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS

|                    |   |                    |
|--------------------|---|--------------------|
| IN THE MATTER OF:  | ) |                    |
|                    | ) |                    |
| ALWAYS CASH, INC., | ) | TDFI No.: 07-113-C |
|                    | ) |                    |
| Respondent.        | ) |                    |

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EMERGENCY CEASE AND DESIST ORDER

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The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that Always Cash, Inc. (hereinafter "Respondent), has violated and is currently violating the "Deferred Presentment Services Act" (hereinafter "Act"), Tennessee Code Annotated Sections (hereinafter "TENN. CODE ANN. §§") 45-17-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-110, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 (Banks and Financial Institutions), the Commissioner has the authority to order any person to cease violating a provision of Title 45 (Banks and

Financial Institutions) or lawful regulation issued under Title 45 (Banks and Financial Institutions). Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Act, and any regulations promulgated pursuant to the Act. TENN. CODE ANN. §§ 45-17-101, *et seq.*

4. TENN. CODE ANN. § 45-17-103 states “[n]o person shall engage in the business of deferred presentment services without having first obtained a license. A separate license shall be required for each location from which the business is conducted.”

5. Pursuant to TENN. CODE ANN. § 45-17-115(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or any administrative regulation issued pursuant to the Act, the Commissioner has the authority to order the person to cease and desist violating the Act or any administrative rules issued pursuant to the Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-17-116(c). In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner

within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-17-116(c).

6. The Respondent is a domestic, for-profit corporation incorporated under the laws of the state of Tennessee on August 7, 2001 (08/07/01). The Respondent's principal office address is located at 64 Dixon Springs Highway, Carthage, Tennessee 37030. The Respondent's Registered Agent is Frankie Phillips (hereinafter "Phillips"), with an address 64 B Dixon Springs Highway, Carthage, Tennessee 37030.

7. The Commissioner issued the Respondent a license (license number 2351) to lawfully engage in the business of deferred presentment services in the state of Tennessee on November 28, 2001 (11/28/01). Pursuant to TENN. CODE ANN. § 45-17-110, said license expired on September 30, 2007 (09/30/07) because the Respondent failed to renew its license. The Respondent failed to renew its license because it failed to file a licensure renewal application and pay the licensure renewal fee by September 1, 2007 (09/01/07), as required by TENN. CODE ANN. § 45-17-110.

#### FACTUAL ALLEGATIONS

8. At all times relevant hereto, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of deferred presentment services in the state of Tennessee. Furthermore, as of the entry date of this EMERGENCY CEASE AND DESIST ORDER, the Commissioner does not have a pending licensure renewal application or a pending new licensure application from the Respondent for the Commissioner's consideration.

9. In an email dated October 1, 2007 (10/01/07), from Phillips to Steve Henley (hereinafter "Henley"), Director of Licensing for the Compliance Division of the

Department, Phillips acknowledged the fact that the Respondent had yet to file its licensure renewal application with the Department.

10. Additionally, in a letter dated October 25, 2007 (10/25/07), from Henley to the Respondent, Henley stated “[a]ccording to the Department’s records your renewal for Deferred Presentment Services has not been received. Under Tennessee Code Annotated Section 45-17-110, failure to pay the renewal fee and submit a renewal application by September 1<sup>st</sup> of each year shall cause the license to expire on September 30<sup>th</sup>. If you are currently engaged in the business of deferred presentment services, you are in violation of TCA § 45-17-103 for operating without a license.”

11. The letter referenced in paragraph ten (10) was mailed, via United States certified mail, return receipt requested, to the Respondent’s principal office address on October 30, 2007 (10/30/07). The certified mail return receipt indicates that the letter was delivered to the Respondent at the Respondent’s principal office address on November 1, 2007 (11/01/07).

12. On November 30, 2007 (11/30/07), Compliance Examiner-in-Charge Michael Wiggins (hereinafter “Wiggins”) conducted an on-site examination of the Respondent at the Respondent’s principal office address pursuant to the Act.

13. During the course of the onsite examination referenced in paragraph twelve (12), Wiggins uncovered evidence that the Respondent had continued to engage in the business of deferred presentment services in the state of Tennessee, at its principal office address, despite the fact that the Respondent’s license (license number 2351) had expired on September 30, 2007 (09/30/07).

14. Specifically, pursuant to the onsite examination referenced in paragraph twelve (12), Wiggins documented approximately seventy-one (71) unlicensed deferred presentment transactions, covering the time period October 1, 2007 (10/01/07) through November 30, 2007 (11/30/07).

15. Pursuant to the onsite examination referenced in paragraph twelve (12), Wiggins drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Wiggins specifically noted "[t]he examiner noted that the license for the deferred presentment business for Always Cash Inc. located at 64 Dixon Springs Hwy, Carthage, TN 37030 expired on 9/30/07. The entity continued to enter into deferred presentment agreements after the license had expired...."

16. According to the examination report referenced in paragraph fifteen (15), the Respondent was provided a copy of the examination report at the conclusion of the onsite examination.

17. The aforementioned pattern of engaging in the business of deferred presentment services without having first obtained a license from the Commissioner is an indicator that the Respondent will continue to engage in the business of deferred presentment services in the state of Tennessee in the future, notwithstanding the fact that the Respondent's license expired on September 30, 2007 (09/30/07).

#### CAUSES OF ACTION

18. The factual allegations as stated in paragraphs eight (8) through seventeen (17) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the

evidence that the Respondent has violated and is currently violating TENN. CODE ANN. § 45-17-103, in that the Respondent has engaged and is currently engaging in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner.

19. The factual allegations as stated in paragraphs eight (8) through seventeen (17) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-17-116(c).

#### POLICY STATEMENT

20. In order to qualify for a deferred presentment services license, TENN. CODE ANN. § 45-17-104(a)(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

21. Additionally, TENN. CODE ANN. § 45-17-104(a)(1) requires an applicant seeking a deferred presentment services license to demonstrate a minimum net worth, determined in accordance with generally accepted accounting principles, of at least twenty-five thousand dollars (\$25,000.00) available for the operation of each location.

22. The factual allegations set forth in paragraphs eight (8) through seventeen (17) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent has violated and is currently violating TENN. CODE ANN. §

45-17-103, by engaging in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner. Said violations have deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that its business will be conducted lawfully and fairly, as well as the opportunity to determine whether the Respondent has satisfied the statutorily mandated minimum net worth requirement. Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant the Respondent a license under the Act prior to entering into deferred presentment service agreements with Tennessee consumers.

#### EMERGENCY RELIEF

23. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent has violated and is currently violating the Act, and that extraordinary circumstances warrant immediate action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Respondent shall cease and desist immediately from engaging in the business of deferred presentment services in the state of Tennessee without a deferred presentment services license from the Commissioner pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-110, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c).

24. The provisions of this EMERGENCY CEASE AND DESIST ORDER shall remain in full force and effect unless and until such time as any provision is

modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

#### RIGHTS OF THE RESPONDENTS

25. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this EMERGENCY CEASE AND DESIST ORDER. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the Official Compilation Rules & Regulations of the State of Tennessee, Rules of Procedure for Contested Cases, Chapter 0180-6.

26. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This EMERGENCY CEASE AND DESIST ORDER does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of: 1) a Notice of Opportunity for Hearing and the Rights of the Respondent; and 2) a Notice of Charges.

27. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this EMERGENCY CEASE AND DESIST ORDER. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, Nashville City Center, 511 Union Street, 4<sup>th</sup> Floor, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, this EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order without further legal process.



28. The Respondent may file a Petition for Appeal with the Commissioner within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 4-5-315(b).

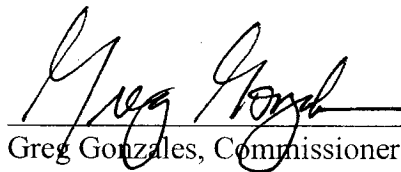
29. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

30. The Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER or the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

31. The Respondent may seek judicial review of this EMERGENCY CEASE AND DESIST ORDER by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this the 14<sup>TH</sup> day of December, 2007.

On behalf of the Department:

A handwritten signature in black ink, appearing to read "Greg Gonzales", is written over a horizontal line.

Greg Gonzales, Commissioner  
Tennessee Department of Financial Institutions